IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9184 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHIVABHAI KHODABHAI PATEL

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 9184 of 2002

MR VK JOSHI for Petitioner No. 1

MR N.J.SHAH for MR DN PATEL for Respondent No. 1

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 16/10/2002

ORAL JUDGEMENT

Rule. Mr. N.J.Shah, learned advocate appears and waives service of notice of rule on behalf of the respondent Passport Authority.

2. This petition is filed under Article 226 of the Constitution, praying for a direction to the respondent Passport Authority to issue a passport to the petitioner under his present name as "Shivabhai Khodabhai Patel", i.e. the name after his adoption.

3. Mr. V.K.Joshi, learned advocate for the petitioner submits that the petitioner is denied issuance of passport by the respondent Passport Authority on the ground that adoption deed for a person more than 15 years of age is not acceptable, and the petitioner, is therefore required to obtain necessary orders from the competent Court.

3. Mr. N.J.Shah, learned advocate for the respondent Passport Authority states that the respondent Passport Authority functions under the Ministry of External Affairs and as per the instructions of Ministry of External Affairs, the respondent Passport Authority has asked the petitioner to obtain the Court's order. However, no document was placed before this Court to this effect.

4. Mr. V.K.Joshi, learned advocate for the petitioner has drawn the attention of this Court to the Hindu Adoption & Maintenance Act, 1956, and more particularly Section 10 which reads as under:

> 10. Persons who may be adopted- No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely:
>
> i) He or She is a Hindu;
>
> ii) He or She has not already been adopted;
>
> iii) He or She has not been married, unless there is custom or usage applicable to the parties which permits persons who are married being taken in adoption;
>
> iv) He or She has not completed the age of 15 years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of 15 years being taken in adoption.

5. Sub Section (iv) of Section 10 contemplates exemption to the age bar for adoption. Mr. V.K.Joshi,

learned advocate for the petitioner has produced a certificate by draft amendment entitling the petitioner from exemption under Section 10 (iv). He further states that the petitioner shall produce the certificate issued from the Pramukh of the Samaj suggesting that in the petitioner's samaj adoption of a person of more than 15 years of age is permissible, along with the application for passport and also undertakes to complete rest of the formalities in this regard.

6. In view of the aforesaid state of affairs, I am of the opinion that the respondent Passport Authority should not have refused the issuance of passport to the petitioner, and therefore, petition deserves to be allowed. The respondent Passport Authority is directed to issue passport to the petitioner in accordance with law, within six weeks from the date of receipt of this order, provided other formalities, as required in this regard is completed.

7. In view of the aforesaid observations and directions, petition stands disposed of. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

(A.M.Kapadia,J)

Jayanti*